

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 363 of 1994

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1,2 & 5 Yes.
3 and 4 No.

NARVAT @ BHATTI RAYAJIBHAI

Versus

STATAE OF GUJARAT

Appearance:

MR R.N. Shah for appellants
Mr. Umesh Trivedi, learned Addl.P.P. for the
State of Gujarat

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 11/09/96

12/09/96

ORAL JUDGMENT ;

1. This Appeal is directed against the conviction and sentence as awarded to the appellants in Sessions Case No.63/91 by the learned Addl. Sessions judge, Godhra vide his judgment and order dated 17-1-94 whereby the appellants have been held guilty of the offences

punishable under Section 304 Part II read with S.34 of the I.P.C. and each of them have been sentenced to 4 years RI and a fine of Rs.500/- and in default to undergo one month's SI.

2. Briefly stated the case of the prosecution is that in the year 1990, thresher of Prabhatbhai Adabhai was brought on hire by the deceased Babubhai Nanabhai. On 12-9-90 at about 8 'O' clock in the morning deceased Babubhai with Kanubhai, Parvat and Bhala left for work at Kalol from Jhankharipura. While they were passing nearby flour mill of Jaswantbhai, the two accused-appellents, namely, Narvat Rayajibhai and Jethabhai Madabhai interrepted them. Narvat was having a stick and he started abusing Babubhai, raising a grievance that how they had brought the thresher prior to them because they were also scheduled to use the thresher on hire. Babubhai asked them not to abuse and he told that he did not know that the accused persons were also to use the thresher on hire. Both the accused-appellants then assaulted Babubhai and Narvat-appellant-accused no.1 gave a stick blow on the back and waist of Babubhai. Babubhai fell down and thereupon the appellant No.2 also gave him blows with fist and kicks. Parvat rushed down to the complainant's house and Babubhai also ran away from the spot and took shelter in the house of Mada Dava. The two apellants-accused ran away. The father of the deceased then came to the place of the incident and brought Babubhai to his house in a cot and took him to the Police Station, Kalol. The deceased was sent to Hospital at Kalol with a police Yadi and was then referred to the Civil Hospital, Godhra where he died on 14-9-90 in the afternoon at 2.45. The Police had initially registered the case against the two appellants-accused persons under S. 323, 504 and 114 of IPC and S.135 of the Bombay Police Act. Whereas Babubhai had died during the course of the investigation, the case was then registered under S.302 IPC by the Police. The inquest report was prepared and the dead body was sent for post mortem. During the course of investigation, the stick was recovered at the instance of the appellant-accused no.1 i.e. Narvat and after completing the investigation, the charge-sheet was filed against the accused persons in the Court under Ss. 302, 504 and 114 IPC and S.135 of the Bombay Police Act. The Judicial Magistrate, First Class, Kalol vide his order dated 1-4-91 committed the case under S.209 of the Cr.P.C. to the Sessions Court of Panchamahals District where from the case was sent for trial to the Court of Addl. Sessions Judge, Panchamahals, camp at Godhra. Both the accused were charged for the offences under Ss. 302, 504 and 114 IPC and S.135 of the Bombay Police Act.

They denied the charge and claimed to be tried. After recording evidence, the statements of the appellants-accused were recorded under S.313 of the Cr.P.C. The learned Addl.Sessions Judge after taking into consideration the oral evidence and the medical evidence came to the conclusion that the offences under Ss. 302, 504 and 114 IPC and S.135 of the Bombay Police Act had not been proved against the appellants-accused, but he convicted both the appellants for the offence under S.304 Part II read with S.34 of the IPC. Having convicted both the appellants, as above, the learned Addl. Sessions Judge sentenced each of the two appellants to 4 years RI with a fine of Rs.500/- and in default to undergo one month's SI each vide order dated 17-1-94.

3. It is against this order dated 17-1-94 passed by the learned Addl.Sessions Judge, Panchamahals at Godhra that the present Appeal has been preferred by the two appellants. At the time of arguments Mr. R.N.Shah, learned counsel for the appellants, confined his argument on the question of sentence only. He submitted that the incident took place on 12-9-90 and Babubhai had died on 14-9-90. While referring to the medical evidence, it has been argued by Mr. Shah that in fact Babubhai did not die on account of the injuries, which have been caused by the appellants, but because of the post operative complications while he was being treated. He has also submitted that it was a very minor issue relating to the use of hired thresher, as to whether which party was to use the thresher first, on which the incident took place and the appellants in fact had no intention to cause such bodily injury to the deceased so as to cause his death. He has referred to the post mortem report as also the injury report and the statements of the concerned Doctors P.W.3 - Dr. Sunil D. Nagori and P.W.4 - Dr. Nilesh N. Thakkar.

Dt: 12-9-96

Dr. Sunil D. Nagori - P.W.3 has stated that at the time when the deceased was brought to him he was fully conscious and was also able to sit. In cross-examination, he has stated that at that time his blood pressure was normal. He has also stated that he was not in a position to give the size of the injuries and he was also not in a position to say as to whether the blow was given with normal force or with slight force, no X-ray was taken by him, he had examined him only externally and that according to him the injuries sustained by the deceased would have taken 10 to 12 days

in the process of healing. Dr. Nilesh N. Thakkar P.W. 4, who had conducted the autopsy, has deposed that there was a fracture of 8th, 9th, 10th and 11th rib on the left side, the lower chamber on the right side of the heart was full of blood clots whereas the lower left side chamber of the heart was without any blood and he has stated that cause of death was respiratory failure on account of the blood clots on the right side of the heart. It appears from his statement that the injuries sustained by the deceased had been X-rayed, but it has been deposed by him that in the case papers there was no written report of the Radiologist nor the X-ray plate was there. In the case papers no fracture was mentioned except in column No.20 i.e. with regard to the ribs. He has also deposed that in absence of the X-ray plate, he was not in a position to give the details about the injuries and as to whether they had been natural or unnatural and he has also stated that according to the case papers on 13-9-90 the general condition of the deceased was reported as good. It is a fact that the Doctor, who operated deceased Babubhai, has not been examined.

4. Keeping in view the evidence, oral as well as medical, in its entirety and the submissions, which have been made at the Bar, there is no question of interfering with the conviction recorded by the trial court against the present appellants under S.304 Part II read with S.34 of the IPC.

5. However, in the facts and circumstances of this case and the manner in which a trivial issue took the turn of a dispute between the parties, which led to the death of Babubhai, and keeping in view the young age of the appellants i.e. 21 and 18 years respectively at the time of the commission of the offence, in which case they are of 26 and 23 years respectively by now, and also keeping in view that they are in Jail since 17-1-94, it thus appears to be a fit case for reducing the sentence to the sentence already undergone by them uptill now. By now they have already served more than fifty percent of the sentence i.e. for a period of about 2 years and 8 months out of the total four years. Mr. Shah has placed reliance on JT 1996(2) S.C. 344, Kuldeep Singh v. State of Haryana, in which case while maintaining the conviction under S.304 Part II the sentence of 4 years RI was reduced to the period of sentence already undergone and the accused, who had served the sentence for a period over 2 years, were ordered to be released. Mr. Shah has submitted that present case is a still better case for reducing the sentence to the sentence already undergone

because in the case before the Supreme Court five persons were injured and one had died of the injuries.

6. Looking to the facts of this case in entirety, while upholding the conviction, I find it to be a fit case for reducing the sentence from 4 years RI to the period of sentence already undergone by the appellants Narvat Rayajibhai Rathod and Jethabhai Madabhai Rathod. The fine imposed by the trial court is maintained. This Appeal is thus allowed in part and it is directed that the appellants Narvat Rayajibhai Rathod and Jethabhai Madabhai Rathod shall be released forthwith in case they are not required in any other case.